petitioners were afforded hearings before the Board of Directors of the Union. Each petitioner was provided with a full and fair opportunity to present information to that Board.

The Board of Directors of the Union considered the facts presented by each of the petitioners at their hearings, and analyzed the collective bargaining agreement and the relevant statutes and ordinances as they applied to the facts of each case. The Board voted not to authorize the use of Union funds to support a legal action by petitioner, DiPinto, based upon its conclusion that such a legal action was not warranted and would not succeed. The Board voted to authorize the use of Union funds to support a legal action by the petitioner, Cunningham, based upon it determination that he should be afforded all of the rights of a permanent employee of the Newport Police Department. A civil action was commenced on petitioner, Cunningham's, behalf by the Union in the Rhode Island Superior Court after a full hearing. When Cunningham requested the Union to fund an appeal to the Supreme Court of Rhode Island, the Board again afforded him a hearing before the Union's governing Board. After a full review, the Board declined to authorize further funding on Cunningham's behalf. The respondent, Union refers this Court to the affidavit signed and filed by John Sperling, President of FOP Lodge #8, which was attached to respondent, Union's motion to dismiss or for summary judgment filed in the Trial Court on September 30, 1992.

SUMMARY OF ARGUMENT

The Federal Trial Court decided correctly and the United States Court of Appeals for The First Circuit affirmed that the petitioners are unable to establish a meritorious claim for wrongful termination against the City of Newport in light of the prior State Court judgment dismissing their claims for wrongful termination against the City of Newport. The complaints filed by the petitioners in the State Court sought compensatory damages and reinstatement of their former positions as Newport police officers allegedly denied to them as a result of being wrongfully terminated. The petitioners had a full and fair opportunity to litigate all issues relating to their alleged wrongful termination in the State Court.

The petitioners cannot establish a prima facie claim for "unfair representation" by the respondent Union without establishing that they have meritorious claims against the City of Newport for wrongful termination. Since the petitioners are precluded from establishing such a meritorious claim under the principals of res judicata and collateral estoppel, it is impossible for them to establish one of the essential elements of an "unfair representation" claim.

In its motions to dismiss or for summary judgment, the respondent Union set for the factual basis for its contention that it acted in good faith at all relevant times, and at no time acted

in an arbitrary manner in regard to the claims of the petitioners. An affidavit setting forth the factual basis for the contentions of the Union was filed with the motion to dismiss or for summary judgment. In response to the motion, the petitioners cited no facts tending to show that the Union acted at any time using bad faith or in an arbitrary manner.

ARGUMENT

The respondent Union hereby adopts the legal arguments stated in the brief of respondent, The City of Newport, et al in their entirety. Since the petitioners are unable to establish meritorious claims for wrongful termination against the City of Newport, they are unable to establish a breach of "fair representation" on the part of the Union, as a matter of law. In order to establish a breach of the duty of fair representation on the part of the Union, the petitioners mush show that their claims are meritorious, and that the Union acted in an arbitrary or bad faith manner in processing their grievances, Vaca v. Sipes, 386 U.S. 171 (1967) and Kissinger v. United States Postal Service, 801 F.2d 551 (1st Cir. 1986). The petitioners are unable to establish a meritorious claim for wrongful termination against The City of Newport in the Federal Trial Court. The petitioners attempted to litigate claims in the Federal Trial Court which were raised or could have been raised in the Rhode Island Superior Court. For this reason, the Federal Trial court correctly decided and the Circuit Court correctly affirmed the decision that the petitioners' claims for wrongful termination were barred as a matter of law under the principles of res judicata and collateral estoppel. Since the petitioners are unable to establish a meritorious claim for wrongful termination, they cannot satisfy one of the essential

elements of a "fair representation" claim as enunciated in Vaca and Kissinger.

The petitioners failed to raise any genuine issues of material fact in their responses to the respondent Union's motion to dismiss or for summary judgment. Specifically, the petitioners failed to provide any factual basis for their claims that the respondent Union acted at any time in bad faith or in an arbitrary manner. The Federal Trial Court correctly decided that the petitioners were unable to satisfy these other elements of their "fair representation" claims as a matter of law and the Circuit Court correctly affirmed that decision.

CONCLUSION

The petitioners are precluded from litigating "fair representation" claims against the respondent, John Sperling, in his capacity as President of Lodge #8 of the Fraternal Order of Police, the Federal Trial Court. The prior judgment of the Rhode Island Superior Court dismissing the petitioners' wrongful termination claims with prejudice effectively bars the action which was filed in the Federal Trial Court. Since there has been a prior determination that the petitioners do not have a meritorious wrongful termination claim against the City, they are unable to establish an essential element of an "unfair representation" claim against the respondent, John Sperling, in his capacity of President of Lodge #8 of the Fraternal Order of Police.

In their response to the Union's motion to dismiss or summary judgment, the petitioners failed to adduce any facts to show that the Union acted arbitrarily or in bad faith. For that reason, the petitioners are unable to satisfy the other essential element of an "unfair representation" claim as a matter of law on the pertinent facts and law applicable to this case, the petitioners have failed to establish that there are any special and important reasons why their petition should be granted as required under Rule 13 of the Rules of this Supreme Court.

For the reasons stated above, the respondent, John Sperling, in his capacity of President of Lodge #8 of the Fraternal Order of Police, request that petitioners' petition for a Writ of Certiorari be denied and dismissed.

Respectfully submitted,
John Sperling, in his capacity
of President of Lodge #8 of the
Fraternal Order of Police,
By Its Attorneys,

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CERTIFICATION

I hereby certify that I mailed a copy of the within to counsel of record and to both said Pro Se Petitioners by depositing the within in a United States Post Office mailbox with first class postage, prepaid, said counsel of record and both Pro Se Petitioners being named above, on April 18, 1994.

Dated: 4/18/94

Subscribed and sworn to before me this 18th day of April, 1994.

Notary Public Carol Blanchard
My commission expires 7/21/95